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10/531,449	04/14/2005	Yasuhiro Shigeyama	2005_0649A	7002

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WASHINGTON, DC 20006-1021

EXAMINER

COLLINS, MICHAEL

ART UNIT	PAPER NUMBER
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3651

MAIL DATE	DELIVERY MODE
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07/19/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No.

10/531,449

Applicant(s)

SHIGEYAMA ET AL.

Examiner

Michael K. Collins

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 09 May 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments with respect to claims 1-4 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 8-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

- Claim 8 recites the limitation "said rails" in line 2. There is insufficient antecedent basis for this limitation in the claim.
- Claim 9 depends from claim 8.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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5. Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Saeki et al. (USP 5,755,551).

Regarding claim 1, Saeki et al. disclose a drug dispenser (10) comprising a drug case (13) ([for containing a plurality of drug packages stacked in a vertical direction, each of the plurality of drug packages being a rectangular package having a flange at an upper side of the package,] *This is an intended use statement. Therefore, the patentable weight of this statement is considered under the conditions that if a different apparatus is capable of performing the same operation under any conceivable circumstance or scenario it may be considered prior art regardless of whether that apparatus discloses this particular use.*),

- and a pushing mechanism (47) [for pushing out the lowermost drug package in a horizontal direction (see Figure 7c)],
- wherein a guide member (66) is provided separately from the pushing mechanism [for supporting and guiding the flange of the second drug package when the lowermost drug package is being pushed out, the guide member being provided in a pushing direction of the pushing mechanism (see Figure 2)].

Regarding claim 2, Saeki et al. disclose the drug dispenser of Claim 1, wherein the guide member (66) is provided on at least any one side of the two sides of the pushing direction (see Figure 2).

Regarding claim 3, Saeki et al. disclose the drug dispenser of Claim 1, wherein the guide member (66) is extended toward a downstream side of the pushing direction (see Figure 4).

Regarding claim 4, Saeki et al. disclose the drug dispenser of Claim 1, wherein the guide member (66) supports and guides the flange of the drug package on an upstream side of the pushing direction (see Figure 4).

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. Claims 5, and 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Saeki et al. (USP 5,755,551), as applied to claims 1-4 above.

Regarding claim 5, Saeki et al. disclose a dispenser for dispensing drugs contained in a package having an upper flange, said dispenser comprising:

- an upper case (13) for containing a plurality of the packages stacked in a vertical direction
- a lower case (14) connected to a lower end of said upper case (see Figure 4)

- a pushing mechanism (47), disposed in said lower case, for pushing out and dispensing the lowermost package in a horizontal pushing direction (see Figure 7c)
- at least one guide member (66) for supporting and guiding the flange of the second lowermost package when the lowermost package is pushed out by said pushing mechanism, said guide member being provided above said pushing mechanism.

However, they do not disclose the at least one guide member disposed on a sidewall of said lower case but rather on the upper case (13). Yet, the reversal of components in a prior art reference, where there is no disclosed significance to such reversal, is a design consideration within the skill of the art. In re Gazda, 219 F.2d 449, 104 USPQ 400 (CCPA 1955); In re Japikse, 181 F.2d 1019, 86 USPQ 70 (CCPA 1950).

Regarding claim 7, Saeki et al. disclose the dispenser that is obvious over Shigeyama et al. as claimed in claim 5. However, they do not disclose a dispenser wherein said at least one guide member comprises a pair of guide members disposed on opposite side walls of said lower case. Yet, duplicating the components of a prior art device is a design consideration within the skill of the art. In re Harza, 274 F.2d 669, 124 USPQ 378 (CCPA 1960).

Regarding claim 8, Saeki et al. disclose the dispenser that is obvious over Shigeyama et al. as claimed in claim 7. However, they do not disclose a dispenser wherein said guide members protrude from the side walls of said lower case and are disposed above said rails so that a bottom surface of the lowermost package will not

contact the rails when supported in a horizontal position by said guide members. Yet, duplicating the components of a prior art device is a design consideration within the skill of the art. In re Harza, 274 F.2d 669, 124 USPQ 378 (CCPA 1960).

Regarding claim 9, Saeki et al. disclose the dispenser that is obvious over Shigeyama et al. as claimed in claim 8. However, they do not disclose a dispenser wherein said guide members function to support the flange of the second lowermost drug package when an upstream end of the second lowermost package, with respect to the pushing direction, drops due to the lowermost package being pushed out by said pushing mechanism. Yet, duplicating the components of a prior art device is a design consideration within the skill of the art. In re Harza, 274 F.2d 669, 124 USPQ 378 (CCPA 1960).

9. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Saeki et al. as applied to claims 1-5, and 7-9 above, and further in view of Yuyama et al. (USP 6,789,996).

Regarding claim 6, Saeki et al. disclose a dispenser that is obvious over Shigeyama et al. as claimed in claim 5, wherein said pushing mechanism comprises two rails (36,37), a screw (38,41,45) disposed below and extending along the rails, and a pushing claw (47) adapted to be driven in a forward direction. However, they do not disclose the pushing claw be driven in a reverse direction upon rotation of the screw. Yuyama et al. disclose a dispenser wherein a pushing claw that can be driven in a reverse direction upon rotation of the screw. Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the applicant's invention to modify Saeki

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et al. by including in the dispenser a pushing claw that can be driven in a reverse direction upon rotation of the screw, as disclosed by Yuyama et al., for the purpose of preventing medicine remaining on the discharge member from being discharged (see column 2 lines 46-47).

### ***Conclusion***

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

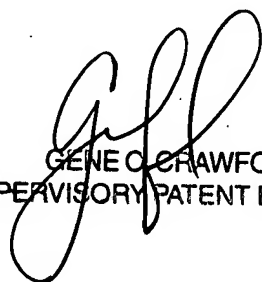


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael K. Collins whose telephone number is (571) 272-8970. The examiner can normally be reached on 8:30 am - 5:00 pm M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene O. Crawford can be reached on (571) 272-6911. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

M.C.  
7/13/2007

  
GENE O. CRAWFORD  
SUPERVISORY PATENT EXAMINER